118-626

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 867.

THE JACKSONVILLE, PENSACOLA AND MOBILE RAIL-ROAD COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED MARCH 30, 1886.

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JUDD & DETWEILER, PRINTERS, WASHINGTON

1 *I.—Petition. Filed March* 24, 1885.

In the Court of Claims.

THE JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD COMPANY
vs.
THE UNITED STATES. } No. 14572.

To the honorable the judges of the United States Court of Claims:

The petition of the Jacksonville, Pensacola and Mobile Railroad Company shows to this court:

I. That your petitioner is a railroad corporation, duly incorporated under the laws of the State of Florida, and has been since prior to the first day of July, 1876, the operator of the lines of railroad hereinafter mentioned, carrying on the business of a carrier of passengers and freight thereon.

II. That from the first day of July, 1876, to the first day of July, 1880—that is to say, for the term of four years prior to July 1, 1880—your petitioner carried the mails of the United States upon said lines of railroad under the direction of the Postmaster General, the same being designated and known as route No. 16002, from Jacksonville, in the State of Florida, to Chattahoochee river, with a branch from Tallahassee to St. Marks, except as hereinafter stated.

III. That for a long period of time prior to the first day of July, 1876, namely, for upwards of thirty years prior to said last-mentioned day, the said Postmaster General had been used and accustomed to arrange with the various railroad companies carrying the United States mails for the transportation of the mails upon the various railroad routes, for periods of four years' duration, at the rates of

2 compensation prevailing by law at the commencement of such periods of four years, and that such periods of four years habitually commenced on the first days of July, such day being the commencement of the postal year.

IV. That according to the habitual practice of the Post Office Department, established by said Postmaster General and maintained during all the period aforesaid, the said Post Office Department issued, shortly prior to the expiration of such period of four years for which the transportation of the mails had been previously arranged, a notice, called the distance circular, and served the same upon the company operating lines upon routes for which arrangements for the transportation of said mails were intended, which said circular requested said companies to return said distance circulars with certain information called for by said circulars, namely, the names and distances apart of the various stations on such roads, and the distance to the various post offices at or near to said several stations.

V. That further, according to said established practice, the said Department, prior to the commencement of service on the respective routes, issued a circular to the companies operating such routes for which arrangements were intended, instructing them in regard to the ascertainment of the weights of the mails, and calling for a statement of the frequency and speed of the trains upon such routes.

VI. That according to such established practice of said Department, upon the receipt of such information as was called for by said distance and weight circulars from the companies to which the same were directed, the mails of the United States for the routes embraced in said distance circulars were delivered to the respective companies for transportation on the first day of July next thereafter.

VII. That according to the established practice of said Department, maintained throughout the period aforesaid, the compensation for carrying the mails was adjusted at some time subsequent to the commencement of service upon the various routes upon the
3 results of a weighing of the mails actually transported as directed by law and in conformity with the rates established by law at the commencement of said service and an order made directing the auditor of the Treasury to pay in accordance therewith.

VIII. That prior to the said last day of July, 1876, and in or about the month of March, 1876, the Postmaster General issued and delivered to your petitioner a distance circular, in conformity with said established practice, calling for a return of the stations on said route and their distances apart and the post offices at or near to the various stations on the said road and their respective distances from such stations. That your petititioner complied with the requirements of said distance circular and returned the same to the Postmaster General with the information therein required.

IX. That the Postmaster General, prior to the said first day of July, 1876, issued and delivered to your petitioner a weight circular, in conformity with said established practice, instructing your petitioner as to the weighing of the mails carried upon said route and inquiring as to the frequency and speed of the trains on said route. That your petitioner complied in all respects with the requirements of said weight circulars

X. That on the first day of July, 1876, the mails of the United States for said routes were delivered by the Postmaster General to your petitioner, and continued to be so delivered for the full period of four years to the first day of July, 1880, and your petitioner has duly transported and delivered the same to the agents of the said Postmaster General during all the period for which claim is here made.

XI. That the said Postmaster General caused the mails upon said route to be weighed according to law, and on or about the 12th day of October, 1876, made the following order:

"No. 5468. October 12, 1876. Authorize the auditor of the Treasury for the Post Office Department to pay the Jacksonville, Pensacola and Mobile R. R. Company, quarterly, for carrying the mails between Jacksonville and Chattahoochee river on the
4 main line and from Tallahassee to St. Marks on the branch from July 1, 1876, to June 30, 1880, at the rate of $12,692.77 per annum (being $57.60 per mile per annum for 213.52 miles, and $18.00 per mile per annum for 21.89 miles), unless otherwise ordered, subject to fines and deductions, under sections 1 and 13 of the act of July 12, 1876. Service 13 times per week to Talla-

hassee, 165 miles, seven thence to Quincy, 24 miles, and six the residue of main line, 20 miles, equivalent to 11½ trips, and three round trips per week on branch."

XII. That by the orders of the said Postmaster General the said route was from October 1, 1877, reduced so as to extend from Lake City to Chattahoochee river, and by further order of said Postmaster General was reduced to extend from Lake City to Chattahoochee from July 7, 1878.

XIII. That your petitioner is lawfully entitled to receive the full sum of $57,243.55 for the service performed as aforesaid, but the Postmaster General has withheld therefrom the sum of $16,948.36, and refused to pay the same to your petitioner, claiming that he is entitled to deduct from the sums payable, according to the rates prevailing by law on the first day of July, 1876, 28 per centum of the amount thereof, under the provisions of the act of July 12, 1876, making appropriations, among other things, for the service of the Post Office Department; also a further sum equal to five per cent. of the amount allowed by the act of July 12, 1876, under the provisions of the act of June 17, 1878. Your petitioner alleges that, although it is of the class of land-grant roads as designated by the act of July 12, 1876, yet it avers that by reason of the premises the United States became bound to pay to your petitioner as compensation for transporting the mails as aforesaid the sums called for by the rates prevailing on the first day of July, 1876, and that such obligations excluded the adjustment of your petitioner's compensation from the operation of the said acts of 1876 and 1878.

XIV. Your petitioner further avers that under the orders of the said Postmaster General your petitioner carried the mails directed to the various post offices intermediate the termini of said route and contiguous to the various stations upon said lines of railroad to such respective post offices, such post offices being distant from the said line of railroad by various amounts not exceeding eighty rods each, and for that purpose was compelled to employ, and did employ, and pay messengers for the carriage thereof, and your petitioner is advised that said service was no part of the duty prescribed or imposed by law for railroad carriers of the mail, and was not compensated by the amounts allowed by law for the carriage of the mails by railroad, and was reasonably worth the sum of $2,000 for the period of four years aforesaid, but the said Postmaster General has refused to make any compensation to your petitioner for such service, and there is reasonably due and owing to your petitioner therefor the sum of $2,000.

XV. Your petitioner further shows that in accordance with the practice of the Post Office Department, as hereinbefore stated, the Postmaster General arranged with your petitioner to transport the mails on route No. 16002, aforesaid, from July 1, 1880, to June 30, 1884, at the rate of compensation prevailing by law on said first day of July, 1880; and your petitioner actually carried the mails of the United States on said route, under said arrangement, for the full period of two years from said first day of July, 1880, at the rates

last aforesaid, and there was due therefor from the United States to your petitioner the full sum of $20,500.58.

XVI. Your petitioner further alleges that the said Postmaster General has unlawfully deducted and withheld from your petitioner, out of the moneys due to your petitioner, as last aforesaid, the sum of $48.72, and has hitherto neglected and refused to pay the same to your petitioner. That said Postmaster General alleges as the reason for deducting the same that the mails carried from their points of departure on certain days during the last-mentioned period of two years, and which, according to the schedule times fixed by the Postmaster General, should have arrived at their destination on certain days, did not arrive at said places of destination
6 on the days named for the purpose of said schedules, but after the expiration of the days on which they were due by schedule times. Your petitioner admits that delays existed as represented as aforesaid by the Postmaster General in the transportation of the mails aforesaid, but avers that for each of said trips on which delays occured the mails delivered to your petitioner were carried to their proper destination as directed under the authority of the Postmaster General. That your petitioner for each trip as aforesaid did use due diligence to transport the mails within the times prescribed by said schedules, but that the delays that occurred as aforesaid were occasioned by unavoidable obstructions caused by storms and other circumstances beyond the control of your petitioner, and that every mail was carried to its proper destination as soon as such obstructions could by diligence be overcome.

XVII. Your petitioner avers that although delays occured as aforesaid in the delivery of the mails for certain trips as aforesaid, yet no trip called for by the orders of the said Postmaster General was left unperformed, but each of said trips was performed in manner and form as required by law.

XVIII. Your petitioner further avers that under the orders of the said Postmaster General it carried the mails directed to the various intermediate post offices contiguous to the various stations on said line of railroad, during the period of two years last aforesaid, to such respective post offices, such post offices being distant from the said line of railroad by various amounts not exceeding 80 rods, and for that purpose was compelled to employ, and did employ, and pay messengers for the carriage thereof; and your petitioner is advised that said service was no part of the duty prescribed or imposed by law for railroad carriers, and was not compensated by the amounts allowed by law for the carriage of the mails by railroad, and was reasonably worth the sum of $800.00 for the period of two years last aforesaid, but the said Postmaster General has refused to make any compensation to your petitioner for such service, and
7 there is reasonably due and owing to your petitioner therefor the sum of $800.00.

XIX. That your petitioner, the Jacksonville, Pensacola and Mobile Railroad Company, has, at the making of the said contract, and at all times since the making thereof, borne true allegiance to the Government of the United States, and has not in any way volun-

tarily aided, abetted, or given encouragement to rebellion against the said Government; and this petitioner believes this petition to be true.

Your petitioner therefore prays judgment for the sum of nineteen thousand seven hundred and ninety-seven dollars and eight cents ($19,797.08).

SAMUEL M. LAKE,
Attorney for Claimant.

CITY OF WASHINGTON, }
District of Columbia, } *ss:*

Samuel M. Lake, attorney for the Jacksonville, Pensacola and Mobile Railroad Company, the petitioner named in the foregoing petition, being duly sworn, on his oath states that no assignment nor transfer of the said claim, nor any part thereof, nor any interest therein, has been made; that the petitioner is justly entitled to the amounts therein claimed from the United States, after allowing all just credits and offsets, and that he believes the facts stated in the said petition to be true.

SAMUEL M. LAKE.

Sworn and subscribed before me this twenty-fourth day of March, A. D. 1885.

H. B. ZEVELY,
Notary Public.

8 II.—*Traverse. Filed April* 9, 1855.

And now comes the Attorney General, on behalf of the United States, and, answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government the Attorney General, in pursuance of the statute in such case provided, denies the said allegations and asks judgment accordingly.

THOMAS SIMONS,
Ass't Att'y General.

9 III.—*Findings of Fact and Conclusions of Law. Filed February* 15, 1886.

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I.

The claimant is a railroad company duly incorporated by the State of Florida. Its road was constructed, in whole or in part, by

a land grant made by Congress on the condition that the mails should be transported over said road at such price as Congress should by law direct. (Act of May 17, 1856, ch. 31, sec. 5–11, Stat. L., 15.)

II.

From July 1, 1871, to June 30, 1875, the claimant carried the mails of the United States on the route named in the petition under the following contract:

No. 6402. $15,408.75 per annum.

This article of contract, made the 18th day of August, in the year one thousand eight hundred and seventy-one, between the United States of America (acting in this behalf by their Postmaster General) and the Jacksonville, Pensacola, and Mobile Railroad Company, by James Anderson, its gen'l superintendent, and F. H. Flagg and F. B. Papy, as sureties, witnesseth:

That whereas the said railroad company has been accepted, according to law, as contractor for transporting the mail on route No. 6402, from Jacksonville, Fla., by Baldwin, Landerson, Olustee, Lake City, Wellborn, Houston, Live Oak, Columbus, Madison, Sandy Ford, Williamsburgh, Monticello, Ancilla, Bailey's Mills, Tallahassee, and Midway, to Quincy and back, six times a week, with a branch from Tallahassee to St. Mark's and back three times a week, at fifteen thousand four hundred and eight and $\frac{75}{100}$ dollars per year, for and during the term beginning July first, eighteen hundred and seventy-one, and ending June thirty, eighteen hundred and seventy-five, being at the rate of $75 per mile on main route and $30 on St. Mark's branch:

Now, therefore, the said Jacksonville, Pensacola, and Mobile Railroad Company, as contractor, and the said F. H. Flagg and F. P. Papy, as sureties, do jointly and severally undertake, covenant, and agree with the United States and do bind themselves—

1st. That the mail (including British, Canada, and other foreign mails) shall be conveyed in a secure and safe manner, free from wet or other injury, in a separate and convenient car, or apartment of a car, suitably fittted up, furnished, warmed, and lighted, under direction of the Post Office Department and to the satisfaction of the Postmaster General, or of his authorized special agent, at the expense of the contractor, for the assorting and safe-keeping of the mails, and for the exclusive use of the Department and its mail agent, if the Department shall employ such agent, and such agent is to be conveyed free of charge. When there is no agent of the Department the railroad company shall designate a suitable person upon each train, to be sworn, to receive and take charge of the mails and of way bills accompanying and describing them, and duly deliver the same; and the mail shall be taken from and delivered into the post offices at the ends of the route, and also from and into the intermediate offices, provided the latter are not over one-quarter of a mile from a depot or station.

2d. That if the company shall run a regular train of passenger cars more frequently than is required by the contract to carry the mail, the same increased frequency shall be given to the mail, and without increase of compensation, and the like as to the increased speed of the mail trains, if desired by the Postmaster General.

3d. That the company shall convey, free of charge, all mail bags and post-office blanks, and also all accredited special agents of the Department, on exhibition of their credentials.

4th. That the company shall not, by itself nor by its agents, transmit nor be concerned in transmitting commercial intelligence more rapidly than by mail, nor carry out of the mail any letters not inclosed in postage-stamped envelopes, as per act of Congress approved August 31, 1852, except such as may have relation solely to some article at the same time conveyed (act March 3, 1845).

5th. That in every case of failure to perform the trip (unless it is shown that the same was not caused by misconduct, neglect, or want of proper skill) there may be a forfeiture of pay for the trip; and a failure to arrive at the end of the route, so as to lose the connection with a depending mail, shall be considered as equal to a whole trip lost, unless the detention or delay be the result of unavoidable causes.

6th. That the company shall be subject to fine for failure to take or deliver a mail, or any part of a mail; for suffering the mail to be wet or otherwise injured, or lost, or destroyed, unless it shall appear that such failure, or other incident as aforesaid, was not caused by misconduct, neglect, or want of proper skill on the part of the company or its officers.

7th. That the company shall be answerable for the adequacy of the means of transportation; for the faithfulness, ability, and diligence of its agents, and for the safety, due receipt, and delivery, as aforesaid, of the mail.

8th. That the Postmaster General may dispense with the service entirely, if required by the public interest, he allowing one month's extra pay upon the amount deducted, or he may annul the contract without making such allowance, for repeated failures of the contractors to perform any of the stipulations of the contract, for violating the post-office law, or disobeying the instructions of the Department.

9th. The said United States covenant with the said company to pay, as aforesaid, at the rate aforementioned, quarterly, in the months of November, February, May, and August, or in the preceding months, at the option of the Department:

Provided always, that this contract shall, in all its parts, be subject to the terms and requisitions of an act of Congress passed the twenty-first day of April, in the year one thousand eight hundred and eight, entitled "An act concerning public contracts."

In witness whereof the said Postmaster General has caused the seal of the Post Office Department to be hereto affixed, and has attested the same by his signature, and the said railroad company, by its general superintendent and their sureties, have hereunto set

their hands and seals the day and year set opposite their names respectively.

(Duly signed, sealed, and delivered.)

III.

No further formal written contract was made between the parties. The claimant continued to carry the mails over its road during the time mentioned in the petition to July 1, 1880, and was regularly paid, without protest or objection, as far as apppears in accordance with the orders, circulars, and notices hereinafter set out, and the regulations of the Post Office Department, unless it is entitled to recover additional compensation upon the facts set out in findings IX and X.

IV.

The Postmaster General issued the following orders at their respective dates, of which the claimant had due notice:

OCT. 21, 1875.

Recognize service of the Jacksonville, Pensacola and Mobile R. R. Co. in carrying the mails between Jacksonville and Chattahoochee river, with branch from Tallahassee to Saint Mark's, for the quarter ended September 30, 1875, at the rate of $20,070.00 per annum (being $90 per mile per annum on main line and $30 per mile on branch), and refer to auditor to pay, subject to fines and deductions and to readjustment on returns to be furnished for Nov., 1875, and January, 1876, with the understanding that no payment is to be made for service performed subsequently to Sept. 30, 1875, until such returns are at hand.

11 MARCH 21, 1876.

Recall order of October 21, 1875, No. 7214, and authorize the auditor of the Treasury for the Post Office Department to pay the Jacksonville, Pensacola and Mobile Railroad Company, quarterly, for carrying the mail between Jacksonville and Chattahoochee river, from July 1, 1875, to June 30, 1876, at the rate of $17,519.40 per annum (being $80 per mile per annum for 213.52 miles and $20 per mile for 21.89 miles on branch), unless otherwise ordered, subject to fines and deductions.

V.

In the spring of 1876 the Postmaster General, for the purposes mentioned in Revised Statutes, section 4002, sent to claimant for the route named in the petition a railroad distance circular and a railroad weight circular, in the usual form, and the information therein requested was duly furnished as follows:

Railroad Distance Circular.

U. S. POST OFFICE DEPARTMENT, CONTRACT OFFICE,
WASHINGTON, *March* 8, 1876.

SIR: To obtain accurate information for the use of this Department with regard to length and location of the Jacksonville, Pensacola and Mobile railroad the Postmaster General requests that you will have inserted in the annexed tabular form the following items, viz: In column 1, the distance from station to station; in column 2, a list of all the stations in the order in which they follow each other; in column 3, opposite each station, the official name of the post office at or near such station, and, in column 4, opposite each post office, the distance, if any, between the post office and the station. State fractions of a mile by decimals, either tenths or hundredths. Be pleased to have the statement verified by the engineer of the road, or other competent officer, and returned to this office.

Very respectfully, &c., JAS. N. TYNER,
Second Assistant Postmaster General.

To R. W. Walker, Esq., rec'r and gen. sup't Jacksonville, Pensacola and Mobile R. R., Tallahassee, Fla.

12 STATE OF FLORIDA:

Route No. 16002, *from Jacksonville to Chattahooche River, with branch, Tallahassee to St. Mark's.*

(1) Distance from station to station.	(2) List of stations.	(3) Official name of post office at or near each station.	(4) Distance from station to post office.
Miles.	MAIL LINE.		*Rods.*
0.00	Jacksonville	Jacksonville	141
10.98	White House		
7.90	Baldwin	Baldwin	1
9.00	Darbyville	Darbyville	9
9.10	Sanderson	Sanderson	1
9.89	Olustee	Olustee	4
12.48	Lake City	Lake City	163
11.21	Welborn	Welborn	5
5.33	Houston	Houston	14
5.73	Live Oak	Live Oak	12
12.99	Ellaville	Ellaville	1
14.94	Madison	Madison	209
13.71	Goodman's	Sandy Ford	14
7.41	Aucilla	Williamsburgh	10
7.38	Drifton	Drifton	16
8.87	Lloyd's	Bailey's Mills	18
6.49	Chaires'		
11.53	Tallahassee	Tallahassee	307
11.98	Midway	Midway	6
11.89	Quincy	Quincy	347
9.00	Mount Pleasant	Glen Julia	1
8.14	Chattahoochee	Chattahoochee	480
3.00	Chattahoochee river		
208.95			
*.44	terminal.		
*209.39			
	MONTICELLO BRANCH.		
0.00	Drifton	Drifton	16
4.13	Monticello	Monticello	131
4.13			
*213.52			
	ST. MARK'S BRANCH.		
0.00	Tallahassee	Tallahassee	307
4.30	Bell Air		
5.70	Ferrill's		
5 81	Wakulla	Wakulla Spring	3
5.00	St. Mark's	St. Mark's	41
20.81			
*1.08			
*21.89			

* In pencil.

13 *Railroad Weight Circular.*

U. S. POST OFFICE DEPARTMENT,
OFFICE OF SECOND ASSISTANT P. M. GENERAL,
WASHINGTON, —— —, 187–.

SIR: By act of Congress, approved March 3, 1873, the Postmaster General is "authorized and directed to readjust the compensation hereafter to be paid for the transportation of mails on railroad routes upon the conditions and at the rates hereinafter memtioned, to wit: That the mails shall be conveyed with due frequency and speed; that sufficient and suitable room, fixtures, and furniture, in a car or apartment, properly lighted and warmed, shall be provided for route agents to accompany and distribute the mails, and that the pay per mile per annum shall not exceed the following rates, namely: On routes carrying their whole length an average weight of mails per day of two hundred pounds, fifty dollars; five hundred pounds, seventy-five dollars; one thousand pounds, one hundred dollars; one thousand five hundred pounds, one hundred and twenty-five dollars; two thousand pounds, one hundred and fifty dollars; three thousand five hundred pounds, one hundred and seventy-five dollars; five thousand pounds, two hundred dollars, and twenty-five dollars for every additional two thousand pounds, the average weight to be ascertained in every case by the actual weighing of the mails for such a number of successive working days, not less than thirty, at such times after June thirtieth, eighteen hundred and seventy-three, and not less frequently than once in every four years, and the result to be stated and verified in such form and manner as the Postmaster General may direct." By the same act, also, it is provided "that additional pay may be allowed for every line comprising a daily trip each way of railway post-office cars at a rate not exceeding twenty-five dollars per mile per annum for cars forty feet in length, and thirty dollars per mile per annum for forty-five feet cars, and forty dollars per mile per annum for fifty-feet cars, and fifty dollars per mile per annum for fifty-five or sixty feet cars: And provided also, That the length of cars required for such post office railway car service shall be determined by the Post Office Department, and all such cars shall be properly fitted up, furnished, warmed, and lighted for the accommodation of clerks to accompany and distribute the mails."

To obtain an accurate and reliable statement of the amount of mail matter conveyed it will be necessary for you to employ some competent person or persons, duly sworn, to make correct returns, under the supervision of an agent or agents of the Post Office Department, to weigh all the through mails and way mails which may be conveyed, outward and inward, to and from each station on your road—route No. 16002, between Jacksonville, Fla., and Chattahoochee, Fla.—for thirty consecutive working days, commencing on the 1st of Jan'y, 1876.

The result you will please state in the annexed tabular form, placing in column 1 the distance from station to station; in
14 column 2 a list of the stations, commencing with the first above

named—the initial point—proceeding in the order in which the stations follow each other from that point, and ending with the last above named—the terminus; in column 3, under the head "Received," the weight of the mails conveyed to each station by trains bound outward; in column 4, under the head "Sent," the weight of the mails conveyed from each station by trains bound outward; in column 5, under the head "Received," the weight of the mails conveyed to each station by trains bound inward; and in column 6, under the head "Sent," the weight of the mails conveyed from each station by trains bound inward. Trains bound outward are those running from the initial point toward the terminus; trains bound inward are those running from the terminus toward the initial point. Opposite the first station in the list there will be no weight entered in column 3, as there can be no mail conveyed to that station by trains bound outward; opposite the last station in the list there will be no weight entered in column 4, as there can be no mail conveyed from that station by trains bound outward. Opposite the last station in the list there will be no weight entered in column 5, as there can be no mail conveyed to that station by trains bound inward; and opposite the first station in the list there will be no weight entered in column 6, as there can be no mail conveyed from that station by trains bound inward. The footings of columns 3 and 4 will balance each other, as they will each show the whole amount of mails conveyed over the route by trains bound outward; and the footings of columns 5 and 6 will balance each other, as they will each show the whole amount of mails conveyed over the route by trains bound inward.

A convenient arrangement will be to place a correct scale on each car conveying mails; weigh all through and way mail matter as it comes on the car at station, and credit the station with the amount under the head "Sent," outward or inward, as the case may be; weigh all through and way mail matter again as it is put off the car at each station, charging the station with the amount under the head "Received," outward or inward, as the case may be. Mail matter coming on the route from another route should be credited to the station at which it comes on, under the head "Sent," outward or inward, as the case may be; and mail matter passing off the route to another route should be charged to the station at which it passes off, under the head "Received," outward or inward, as the case may be. The statement will thus be in the nature of an account kept by the railroad with the stations, in which account the stations will be debited with the amount of mails "Received" off the railroad, and credited with the amount of mails "Sent" on the railroad. Memoranda of the daily weights should be kept, and the final results only stated in this printed form.

Careful attention to all the directions above given will save the Department and the company much trouble.

Very respectfully, your obedient servant,

JAS. N. TYNER,
Second Assistant Postmaster General.

To Maj. R. Walker, receiver, Tallahassee, Fla.

15 *Weight of all the Mails Conveyed, Outward and Inward, to and from each Station on Route No.* 16002, *between Jacksonville and Chattahoochee, for Thirty Consecutive Working Days, Commencing on the* 1*st of January,* 1876.

(1) Distances.	(2) Stations.	Outward.		Inward.	
		(3) Received.	(4) Sent.	(5) Received.	(6) Sent.
Miles.		*Pounds.*	*Pounds.*	*Pounds.*	*Pounds.*
	Jacksonville	----------	12,098	23,936	----------
19	Baldwin	2,110	2,822	6,922	1,139
9	Darbyville	194	192	209	192
9	Sanderson	270	231	303	230
10	Olustee	223	210	213	169
12	Lake City	539	499	986	312
12	Welbourne	270	243	317	237
5	Houston	197	190	228	180
6	Live Oak	11,651	5,352	2,466	29,942
13	Ellaville	308	226	227	234
15	Madison	823	235	272	363
14	Goodman's	264	196	203	213
7	Aucilla	227	199	191	201
7	Drifton	936	393	407	561
9	Lloyd's	416	308	318	250
18	Tallahassee	3,241	449	285	2,778
12	Midway	225	180	180	172
12	Quincy	801	259	280	386
9	Glen Julia	105	85	81	80
11	Chattahoochee	1,567	----------	----------	385
209	----------	24,367	24,367	38,024	38,024

The three postal apartments provided for railway clerks or route agents to accompany and distribute the mails between Chattahoochee and Live Oak are of the following dimensions: 10 feet long and 9 feet wide, situated in the center of the car, with a baggage room and express room in either end. The fixtures comprise the necessary boxes for assorting the mails, with wide counters with drawers, and the necessary hooks for mail bags, chairs, scales, lamps, &c.

The three cars used in transporting the mails between Live Oak and Jacksonville are 16 feet long and 8 feet wide, fitted up with the necessary boxes for assorting the mails, with counter, drawers, chairs, scales, &c.

The mails are carried over the entire length of road between Chattahoochee and Jacksonville daily each way with the exception of Sunday.

On Sunday the mails are carried only between Quincy and Jacksonville, both ways.

The mails are accompanied each way on all trains by railway postal clerks or route agents.

In addition to the above there is carried both ways each day in

the week, except Sunday, on trains No-. 1 and 2, a through mail between Jacksonville and Tallahassee, taking on and putting of at Live Oak the through mails to and from Savannah.

The average rate of speed the mails are carried over the Jacksonville, Pensacola and Mobile R. R. is 18 miles per hour.

I certify under oath that the foregoing statements of the weight of mails conveyed and other particulars respecting the mail service performed on route No. 16002 are correct and true to the best
16 of my knowledge and belief, and that the daily weights were taken and the retnrns thereof made by competent persons duly sworn to make correct returns.

JAS. L. TAYLOR,
Ass't Gen. Sup't, &c.

Sworn and subscribed before me, Geo. Lewis, notary public in and for Leon county, State of Florida, this seventeenth day of February, 1876.

[SEAL.]

GEO. LEWIS,
Notary Public in and for Leon Co., Fla.

VI.

On the 12th day of October, 1876, in accordance with the section and information as to distance and weight mentioned in the next preceding finding and the act of July 12, 1876, chapter 179, the Postmaster General readjusted the compensation to be paid claimant for carrying the mail over this route, and transmitted to the Sixth Auditor an order therefor in the following form:

OCT. 12, 1876.

Authorize the auditor of the Treasury for the Post Office Department to pay the Jacksonville, Pensacola and Mobile R. R. Co., quarterly, for carrying the mails between Jacksonville and Chattahoochee river, on the main line, and from Tallahassee to St. Mark's, on the branch, from July 1, 1876, to June 30, 1880, at the rate of $12,692.77 per annum, being $57.60 per mile per annum for 213.52 miles and $18.00 per mile per annum for 21.89 miles, unless otherwise ordered, subject to fines and deductions under sections 1 and 13 of the act of July 12, 1876; service thirteen times to Tallahassee, 165 miles, seven thence to Quincy, 24 miles, and six the residue of main line, 20 miles, equivalent to 11½ trips and three round trips per week on branch.

On the same day the Postmaster General also sent claimant a circular notice of adjustment of pay for the route in the following form:

Circular.

Reduction of pay for mail service on land-grant railroads under act of Congress of July 12, 1876.

POST OFFICE DEPARTMENT,
OFFICE OF THE SECOND ASS'T POSTMASTER GENERAL,
WASHINGTON, D. C., *October* 12, 1876.

SIR: The act of Congress entitled "An act making appropriations

for the service of the Post Office Department for the fiscal year ending June thirtieth, eighteen hundred and seventy-seven, and for other purposes," approved July 12, 1876, section 1, contains the following proviso, namely:

"Provided, That the Postmaster General be, and he is hereby, authorized and directed to readjust the compensation to be paid from and after the first day of July, eighteen hundred and seventy-six, for transportation of mails on railroad routes by reducing the compensation to all railroad companies for the transportion of mails ten per centum per annum from the rates fixed and allowed by the first section of an act entitled 'An act making appropriations for the service of the Post Office Department for the fiscal year ending June thirtieth, eighteen hundred and seventy-four, and for other purposes,' approved March third, eighteen hundred and seventy-three, for the transportation of mails on the basis of the average weight."

The same also contains the following section:

"SEC. 13. That railroad companies whose railroad was constructed, in whole or in part, by a land grant made by Congress on the condition that the mails should be transported over their road at such price as Congress should by law direct shall receive only eighty per centum of the compensation authorized by this act."

17 Consequently, for mail service performed on and after July 1, 1876, on your road, route 16002, between Jacksonville and Chattahooche river, and branch from Tallahassee to St. Mark's, the compensation will be reduced from $17,519.40 per annum (the amount warranted by the latest returns under the act of March 3, 1873) to $12,692.77 per annum, the reduction amounting to $4,826.63 per annum, of which the sum of $1,751.94 is due to the proviso in the first section and the sum of $3,074.70 to the thirteenth section of the act of July 12, 1876, above quoted.

Very respectfully, your obedient servant,

J. L. FRENCH,
Acting 2d Ass't P. M. General.

To Mr. James Anderson, gen'l sup't, &c., Tallahassee, Fla.

This service was curtailed by the following order:

FEB'Y 25, 1878.

From October 1st, 1877, restate route so as to omit Jacksonville, Baldwin, Darbyville, Sanderson, and Olustee (transferred to Florida Central R. R.), and begin at Lake City, and state distance at 154.23 miles on main line and 21.89 miles on branch, and authorize payment for service from Oct. 1st, 1877, to June 30, 1880, at the rate of $9,277.66 per annum, being $57.60 per mile per annum on main line (land grant) and $18.00 per mile per annum on branch from Tallahassee to Saint Mark's, unless otherwise ordered, subject to fines and deductions.

BRADY.

VII.

The Postmaster General on the 23d day of July, 1878, readjusted the compensation to be paid to the claimant for the transportation of the mails on said routes from July 1, 1878, in accordance with the act of June 17, 1878, chapter 259 (1 Supplement Rev. Stat., 359), by the following order:

JULY 23, 1878.

Authorize the auditor to decrease the pay of the Jacksonville, Pensacola and Mobile Railroad Company for carrying the mails between Lake City and Chattahoochee and branch, Tallahassee to Saint Mark's from July 1, 1878, to June 30, 1880, at the rate of $463.88 per annum, leaving the pay from that date $8,813.78 per annum ($54.72 154.23 miles, and $17.10 21.89 miles), being a reduction of 5 per centum from the rates fixed for weight of mails in accordance with the act of June 17, 1878, and amend order of June 29, 1878 (4821), so as to make the deduction $82.08 instead of $86.40, as therein stated.

BRADY.

On the same day he notified claimant of the readjustment by the following letter:

Circular.

Readjustment of pay for mail service on railroad routes under act of Congress of June 17, 1878.

POST OFFICE DEPARTMENT,
OFFICE OF THE SECOND ASSISTANT POSTMASTER GENERAL,
WASHINGTON, D. C. *July* 23d, 1878.

SIR: The act of Congress making appropriations for the service of the Post Office Department for the fiscal year ending June 30th, 1879, and for other purposes, approved June 17, 1878, contains the following proviso, namely:

"That the Postmaster General be, and he is hereby, authorized and directed to readjust the compensation to be paid from and after the first day of July, 1878, for transportation of mails on railroad routes by reducing the compensation to all railroad companies for the transportation of mails five per centum per annum from the rates for the transportation of mails on the bases of the average weight fixed and allowed by the first section of an act entitled, 'An act making appropriations for the service of the Post Office Department for the fiscal year ending June 30th, 1877, and for other purposes,' approved July 12th, 1876."

Therefore, please take notice that the auditor of the Treasury for this Department has been directed to decrease the pay of your company for the conveyance of the mails on route 16002, between Lake City and Chattahoochee, from July 1, 1878, to
18 June 30, 1880, $463.88 per annum, leaving the pay from the first-named date $8,813.78 per annum, being a reduction of

five per centum from the rates fixed for weight of mails, in accordance with the provision of the act of June 17, 1878, above quoted.

Very respectfully, your obedient servant,

THOS. J. BRADY,
Second Assistant Postmaster General.

To C. H. Allen, Esq., gen. man. Jacksonville, Pensacola and Mobile R. R., Tallahassee, Fla.

The service was again curtailed by the following order:

Curtail service on main line to end at Chattahoochee from July 7th, 1878, decreasing distance 1½ miles, and deduct $86.40 from annual pay of railroad company, being *pro rata.*

FRENCH.

VIII.

The following correspondence took place in relation to this readjustment:

JACKSONVILLE, PENSACOLA AND MOBILE R. R.,
TREASURER'S OFFICE, TALLAHASSEE, FLA., *May* 26, 1879.

Hon. 3d Ass't P. M. Gen'l, Washington, D. C.

D'R SIR: Please send me copy of the last contract between the P. O. Department and this road, and extracts of such laws as relate to the compensation of R. R's for carrying the mail,

And oblige, y'rs truly,

GEO. LEWIS, *Tr.*

JACKSONVILLE, PENSACOLA AND MOBILE R. R.,
TREASURER'S OFFICE, TALLAHASSEE, FLA., *May* 26, 1879.

Postmaster General, Washington, D. C.

DEAR SIR: Please send me, at your earliest convenience, a copy of the order dated July 23, 1878, reducing the pay allowed this road $20.52 per quarter, from July 7 to Sept. 30, '78, and as per ac't of the auditor of the P. O. Dep't from the last-named date to this.

This r'd has no knowledge of any reason why such deduction should be made from the am't—$8,813.78 per annum—on $2,203.44 p'r q'r, as fixed by y'r circular of July 23.

I inclose acc't, w'h please return.

Y'rs, GEO. LEWIS, *Treas.*

POST OFFICE DEPARTMENT,
OFFICE OF THE SECOND ASSISTANT POSTMASTER GENERAL,
WASHINGTON, D. C., *June* 2, 1879.

SIR: Your favors of the 26th instant have been duly received.

In reply, I beg leave to say that the pay of the Jacksonville, Pensacola and Mobile Railroad Company, route 16002, between Lake City and Chattahoochee river, and on branch from Tallahassee to Saint Mark's, on the 30th of June, 1878, was at the rate of $9,277.66 per annum. This was reduced 5 per cent. by act of June 17, 1878,

leaving the pay from July 1, 1878, at the rate of $8,813.78 per annum.

On the 7th July, 1878, the main route was curtailed to end at Chattahoochee, decreasing distance 1½ miles, and pay $82.08 per annum *pro rata*, leaving the pay from July 7, 1878, at the rate of $8,731,70 per annum.

There is no formal contract between your company and this Department for the performance of mail service on your road, the service being rendered by the company, and accepted and paid for by the Department under the provisions of law governing the transportation of mails by railroad, of which a transcript is inclosed in another envelope. The account is returned in compliance with your request.

Very respectfully, &c.,

THOS J. BRADY,
Second Asst. P. M. Gen'l.

Geo. Lewis, Esq., treasurer Jacksonville, Pensacola and Mobile R. R. Co., Tallahassee, Fla.

19 IX.

In carrying the mails from July 1, 1876, to July 1, 1882, the claimant delivered and received the mails to and from all post offices within eighty rods of the line of the road (of which there were several), as required by the rules of the Department, and as it had previously done, for which it was paid nothing in addition to the prices hereinbefore set out.

X.

Between July 1, 1880, and July 1, 1882, the sum of $48.72 was deducted by the Postmaster General, in accordance with the uniform practice for a long series of years, from the compensation fixed by law and the order of the Department for non-delivery of mails on several occasions upon the days required by schedule time, although they were subsequently delivered.

XI.

Regulations and Practice of the Post Office Department.

It has been the usage of the Department ever since the establishment of the railway mail service to require railroad companies carrying the mails to deliver them into intermediate offices within eighty rods distance from the stations, and since 1854 in has been the practice in the advertisements for proposals to give notice that "On all railroad and steamboat routes the contractors will be required to deliver the mails into the post offices at the end of the routes, and into all the intermediate post offices not more than eighty rods from the landing of railroads." In the authorized edition of Postal Laws and Regulations, printed in 1873, is the following:

SEC. 349. In connection with railroad and steamboat routes, mail

messengers are appointed to carry the mails to and from post offices when such offices are more than eighty rods from the steamboat landing or railroad station. * * *

Railroad and steamboat contractors are to have the service performed at all offices within a quarter of a mile of their depots, stations, or landings, as well as at the terminal offices of their routes.

In the authorized edition of the regulations printed in 1879 the same provision appears, as follows:

SEC. 639. When railroad companies must deliver mails to post office.—Railroad companies are required to take the mails from and deliver them into the terminal post offices, and to all intermediate post offices located not over eighty rods from the line of road, and the distances from the terminal depots to the post offices where railroad companies deliver the mails are paid for by the Department as a part of the length of the route.

The following regulation relates only to railroad mail service:

SEC. —. The rates of compensation are computed upon the average weight of mails per day carried the whole length of the route; but the rates fixed by law require not only a certain weight of mails, but also that the mails shall be carried with due frequency and speed, and that suitable room, fixtures, and furniture shall be provided in a car or apartment of car, properly lighted and warmed, for route agents to accompany and distribute the mails as accessories to the weight of mails in order to entitle a company to the maximum rates of pay. The specific requirements of the service, with regard so these items, will be made known through the general superintendent of the railway mail service. The requirement as to due frequency and the size of the mail car or apartment are at all times to be determined by the Department.

20 The following relates to the whole mail service, and is not applicable to the railway service alone:

SEC. 255 (Regulations of 1873). The United States is divided into four contract sections. A letting for one of these sections occurs every year, and contracts are made at such lettings for four consecutive years, commencing on the first day of July. The sections and their current contract terms are:

1. Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and New York; current term to end June 30th, 1877.

2. New Jersey, Pennsylvania, Delaware, Maryland, District of Columbia, and Ohio; current term to end June 30, 1876.

3. Virginia, West Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Arkansas, Louisiana, and Texas; current term to end June 30, 1875.

4. Michigan, Indiana, Illinois, Wisconsin, Iowa, Missouri, Kentucky, Tennessee, California, Minnesota, Oregon, New Mexico, Utah, Washington, Nebraska, Kansas, Arizona, Colorado, Idaho, Montana, Dakota, and Wyoming; current term to end June 30, 1874.

Afterwards, before July, 1875, the divisions were changed and made as follows:

SEC. 574 (Regulations of 1879). The United States is divided into four contract sections. A general letting for one of these sections occurs every year, and contracts are made at such general lettings for four consecutive years, commencing on the first day of July. The sections and their current contract terms are:

1. Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, District of Columbia, Virginia, and West Virginia; current term, July 1, 1877, to June 30, 1881.

2. North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Tennessee, Kentucky, Ohio, and Indiana; current term, July 1, 1876, to June 30, 1880.

3. Illinois, Michigan, Wisconsin, Minnesota, Iowa, and Missouri; current term, July 1, 1879, to June 30, 1883.

4. Arkansas, Louisiana, Texas, Indian Territory, Kansas, Nebraska, Dakota, Montana, Wyoming, Colorado, New Mexico, Arizona, Utah, Idaho, Washington, Oregon, Nevada, and California; current term, July 1, 1878, to June 30, 1882.

The extent of the practice of making written time contracts with railroad companies is shown by the following table:

Year.	Number of routes.	Number of written time contracts.
1872	722	43
1873	781	91
1874	824	4
1875	871	10
1876	912	87

Since the passage of the act of June 11, 1880, ch. 206 (1 Supplement to Rev. Stat., sec. 549), repealing the fifth section of the act of March 3, 1879, ch. 180 (1 Supplement to Rev. Stat., 454), the Postmaster General has continued to make deductions and impose fines on the railroad mail service as before, according to Revised Statutes, section 3962.

Conclusion of Law.

Upon the foregoing facts the court decides as a conclusion of law that the claimant is not entitled to recover, and the petition must be dismissed.

RICHARDSON, *Ch. J.*, delivered the opinion of the court:

The claimant corporation is a land-grant railroad aided under the provisions of the act of May 17, 1856, chapter 31, the fifth section of which is as follows (11 Stat. L., 15):

SEC. 5. And be it further enacted, That the United States mail shall be transported over said roads and branch, under the direction of the Post Office Department, at such price as Congress may by law direct: Provided, That until such price is fixed by law the Postmaster General shall have power to determine the same.

The mails of the United States were transmitted over its road from July 1, 1871, to June 30, 1875, under a written contract with sureties, set out in finding two. From July 1, 1875, to June 30, 1876, they were carried under orders of the Postmaster General fixing the rate of compensation set out in finding 4 without any formal written contract. The company has been fully paid up to the latter date in accordance with said contract and orders and there is no controversy in relation thereto.

Since June 30, 1876, the mails have been carried as before, but without any formal written contract, and the claimant has been paid in accordance with the statutes in force at the time and the regulations, orders, and general practices of the Post Office Department.

Three claims are set up by the company in addition to the amounts paid, each raising a distinct question of law.

1. In 1876, when the Postmaster General readjusted the maximum compensation which might be allowed under Revised Statutes, section 4002, he deducted therefrom 10 per cent., as required by the act of July 12, 1876, chapter 179, section 1 (1 Supplement to Rev. Stat. 225), and allowed and paid the claimant accordingly from July 1, 1876, to July, 1878, when he made another deduction of 5 per cent., under the act of June 17, 1878, chapter 259, section 1 (1 Supplement to Rev. Stat. 359), and paid according to both deductions to June 30, 1880 (findings V, VI, VII, VIII). The amount thus deducted from the maximum which the Postmaster General might have allowed under section 4002 of the revised statutes is what is now demanded in this action.

The company claims that on the 1st day of July, 1876, it entered into a contract with the defendants by which the mails were to be carried for a period of four years from that date at the maximum compensation authorized by Revised Statutes, section 4002, which could not be reduced either by the Postmaster General or by Congress during the term of the contract. If such a contract existed the claimant would be right in its allegation that the compensation could not be reduced, as was held in the case of the Chicago and Northwestern Railway Company *v.* United States (104 U. S., 681), where it was decided that the reduction acts of 1876 and 1878, above mentioned, "apply only to contracts thereafter made or such as did not require the performance of the service for a specific period," in the language of the head-note of the case as reported.

The vital question, then, is whether or not such a time contract was entered into by the parties. There was no written contract as in the case of the Chicago and Northwestern Railway Com-
22 pany, but the claimant relies upon an alleged implied contract, which it insists springs out of the following circumstances:

By one of the regulations of the Department it is provided as follows:

"The United States is divided into four contract sections. A general letting for one of these sections occurs every year, and contracts are made at such general lettings for four consecutive years, commencing on the first day of July." (Finding XI.)

The claimant's road was within the section for which contracts were to end June 30, 1875, until the regulation was altered, when it came within the section for which they were to end July 30, 1876. (Finding XI.)

The only written contract of the parties was made August 18, 1871, to run from July 1, 1871, to June 30, 1875. It was drawn with strict formality, contained many provisions, and its performance on the part of the company was secured by two sureties. (Finding II.) When it expired it was never renewed.

From July 1, 1875, to June 30, 1876, the service was performed under orders of the Postmaster General, dated October 21, 1875, and March 21, 1876, the latter of which expressly confined its operation to June 30, 1876, "unless otherwise ordered." (Findings III and IV.)

The taking and carrying the mails on and after July 1, 1876, the claimant insists, created an implied contract, at the pre-existing rates, for four years, because the company's road was within the section for which contracts were made for that period of time.

In this view we do not concur. The regulations as to contract sections are not made for railroads alone, but for the whole mail service, and include the "star-route" service, for which written contracts are understood to be uniformly entered into. It is very clear, we think, that they are intended to apply only to written contracts, and are merely suggestions that the Postmaster General, when it is found necessary or advantageous to enter into such contracts, will so make them that the whole will expire during one Presidential term, in classes, at regular yearly intervals, so as to be most convenient and least embarrassing to the next succeeding administration. They do not compel the Postmaster General to make time contracts in all cases, nor prevent him from accepting services to be paid for so long as performed, and which may be terminated at any time by either party as circumstances may require; nor are railroads obliged to make time contracts. It is entirely optional on their part, and finding II shows that the Postmaster General has been able to make comparatively but a small number of such contracts with railroad companies, the proportion being much less than 10 per cent. of the whole railroad service, and he has practically abandoned the effort. The

regulations as to contract sections, therefore, have no application to cases where it is not practicable or convenient to make time contracts in writing. When written time contracts are entered into the contractors are required to furnish sureties, as the claimant did in the written contract set out in finding II; and it would be most unreasonable to hold that when, on the expiration of such a contract, the contractor continues for a day or more to perform like service, the implication of the intention of the parties is that he may and shall continue it for a like period of time without sureties. (Eastern Railroad Case, 20 C. Cls., 42.) It is a much more reasonable view that the intention of the parties is that the service is continued only at the option of either party until they can agree upon the terms of a written contract.

The case of Railway Company *v.* United States (101 U. S., 23 543) is cited in support of the claimant's position. We considered that decision in the Eastern Railroad case (20 C. Cls., 43), to which we refer for a full exposition of our understanding of its force and effect. We pointed out that the element of length of time of the contract was not involved therein, and that the Supreme Court held only that a contract existed, in the language of the Chief Justice, "that payment should be made for what was done."

The claimant is a land-grant railroad company, and as such is under a perpetual contract with the United States, made by the act of 1856, to transport the mails at such prices as Congress may by law direct, and in the absence of that direction, then such as the Postmaster General may determine. When, therefore, on and after July 1, 1876, the company carried the mails without any special contract with the Postmaster General, it was bound by the contract of that act making its compensation subject to the laws of Congress. The company had no option in the matter. It was obliged to carry the mails, and to accept whatever price Congress might determine, and that price might be established after as well as before service performed.

There was no occasion for making a time contract with this company. It was bound by the act of 1856 to perpetual service in transporting the mails, and when the parties ceased entering into such contracts it is the proper inference that they intended that the service should be perfomed under the original contract in the act of 1856.

This seems to have been the understanding of both the Department and the company at the time the service was performed. By the correspondence set out in finding VIII it appears that when the treasurer of the company wrote to the Postmaster General May 26, 1879, for an explanation as to why the small reduction of $20.52 per quarter was made (which in the reply was explained to be owing to a curtailment of the length of the route), the treasurer stated that he had no knowledge of any reason why such a reduction should be made from the amount, $8,813.78 per annum, or $2,203.44 per quarter, as fixed by the circular of July 23. The circular thus referred to is the one set out in finding VII, wherein the company is

notified of the 5 per cent. deduction made under the act of 1878. That reduction is not objected to nor questioned.

Congress having fixed the price of the claimant's compensation, as it had a right to do, and the same having been paid, no cause of action arises on this branch of the case.

There is some difference between the land-grant railroad companies and other railroad companies as to their obligations in carrying the United States mails which has been mentioned in decided cases and which it may be well to note.

While the land-grant companies are bound to transport the mails at prices fixed by Congress, those roads which are aided with bonds are entitled to fair and reasonable compensation, not in excess of the rates paid to private parties for the same kind of service (Union Pacific Railway Case, 20 C. Cls., 70); but both are obliged to perform the service. Other companies are not bound to perform the services at all against their will. When they perform service without express contract their compensation depends wholly upon implied contracts to be inferred from and interpreted by the general laws of Congress, and the regulations, orders and practice of the Post Office Department, and other attending circumstances, as in the Eastern Railroad case before cited.

24 2. Another claim is for delivering and receiving the mails to and from all post offices within eighty rods of the line of the road, for which the company has been paid nothing in addition to the rates fixed for the transportation of the same over the railroad route. Additional compensation is refused by the Post Office Department for the service on the ground, as alleged, that it is rightly included in the route for which the rate of compensation was fixed by Congress and the Postmaster General. In this we think the Department is right.

For a long period of time, extending back to the first establishment of the railroad mail service, it has been the practice to include the delivery of the mails within 80 rods of railway stations as part of the railroad route, and that has been promulgated in all advertisements for proposals, and in the official regulations published by authority, as shown by finding XI.

Such a requirement was inserted in the written contracts, as may be inferred, not only from the notice for proposals, but from the fact that it was part of the claimant's written contract set out in finding II, at the end of the first of the numbered paragraphs.

Such a well-established practice, in our opinion, must have been considered by Congress in fixing the maximum compensation, and by the Postmaster General in making his orders allowing the full amount of the maximum, and therefore the pay for such service must be considered as included in the general compensation fixed for the routes.

If this service was properly included in the railroad route, then the claimant, being a land-grant company, was conclusively bound to accept the compensation fixed by Congress and the Postmaster General. If it was not properly included in the railroad route, then the claimant was not bound to perform it, and as it performed the

same without objection or question, it must be held to have done so in conformity with the well-known regulations and practices of the Post Office Department. Had it objected in season the Postmaster General might have reduced its route compensation so far below the maximum as to cover the cost of this delivery to offices within 80 rods of stations. Having made no such objection the Postmaster General had a right to infer that it acquiesced in the practice of the Department, and by such acquiescence it is bound.

For these reasons we have not included in the findings of facts any separate value for this service.

3. There is still another claim for $48.72 which was retained from the compensation fixed by Congress and the Postmaster General for non-delivery of mails on several occasions upon the days required by schedule time, although they were subsequently delivered.

The amount in this case is small, but the principle of law involved is understood to be one of great magnitude and importance to the Post Office Department and to all the railroad companies, affecting, as it does, the accounts and settlements of the whole railroad mail service.

On behalf of the claimants the power of the Postmaster General to make deduction in such case is denied on the ground, as alleged, that his authority to do so under Revised Statutes, section 3962, has been repealed.

That section is [as] follows:

SEC. 3962. The Postmaster General may make deductions from the pay of contractors for failures to perform service according to contract and impose fines upon them for other delinquencies. He may deduct the price of the trip in all cases where the trip is not performed, and not exceeding three times the price if the failure be occasioned by the fault of the contractor or carrier.

25 The fifth section of the appropriation act of March 3, 1879, ch. 259 (1 Supplement to Rev. Stat., 453), provided:

SEC. 5. That the Postmaster General shall deduct from the pay of the railroad companies, for every failure to deliver a mail within its schedule time, not less than one-half of the price of the trip, and where the trip is not performed, not less than the price of one trip, and not exceeding, in either case, the price of three trips:

Provided, however, That if the failure is caused by a connecting road, then only the connecting road shall be fined.

And where such failure is caused by unavoidable casualty, the Postmaster General, in his discretion, may remit the fine.

And he may make deductions and impose fines for other delinquencies.

By section 33 it was enacted that "all acts or parts of acts inconsistent with the provisions of this act are hereby repealed."

Section 5 of the act of 1879 was expressly repealed by the act of June 11, 1880, ch. 206 (1 Supplement to Rev. Stat., 549).

It is contended that section 3962 of the Revised Statutes was virtually repealed as to railroad companies by section 5 of the act of 1879, and so remained, notwithstanding the express repeal of the latter act. The following section of the Revised Statutes is relied upon in support of this position:

SEC. 12. Whenever an act is repealed, which repeals a former act, such former act shall not thereby be revived.

This twelfth section prescribes a rule of construction, as appears by the act of February 25, 1871, ch. 71 (16 Stat. L., 43), wherein its provision was first enacted. It does nothing more, and we are to consider whether, having that section in view, Congress intended, by the acts of 1879 and 1880, to repeal section 3962 of the Revised Statutes as to railroad companies.

In our opinion there is no such inconsistency between the provisions of Revised Statutes, section 3962, and the act of 1879 as to work a repeal of the former, even in part, by the repeal of the latter by the act of 1880, in such a sense that section 12 of the Revised Statutes has any application to the case.

We do not think that in authorizing deductions to be made from the regulation rates for partial non-performance or imperfect performance of the services it was the intention of Congress to apply this rule to all other contractors and let the railroad companies escape it altogether.

It was held by the supreme court of Wisconsin in relation to similar legislation that "when a statute merely exempts a particular class of cases from the provisions of a previously-existing general law which continues in force the repeal of the excepting statute operates to bring such cases under the general law." (Smith *v.* Hoyt, 14 Wis., 252).

Section 3962 of the Revised Statutes applies to all mail service, and is permissive, while the act of 1879 applies to railway mail service alone, and is obligatory upon the Postmaster General in the particular cases therein mentioned, leaving all other cases permissive, as before. The Postmaster General was authorized to do under said section 3962 what he was obliged to do under the act of 1879.

But there is another view of this branch of the case, independent of these statutes, which are only directions by Congress to a public officer, and are not binding upon others unless agreed to by
26 insertion in their contracts, as was the case with the claimant's written contract, clause 6 (finding II), or by performing service under an order making the same "subject to fines and deductions," as in the orders of October 21, 1875, March 21, 1876, and October 12, 1876, respecting the claimant's service (finding IV and VI), or by other assent thereto, which may be inferred from the conduct of the parties and the course of business between them.

The maximum compensation authorized by statute and the amount allowed thereunder by the Postmaster General are for the whole service expected of such railroad companies according to schedule time and other regulations of the Department. For any failure on the part of a railroad company to perform the entire service and to carry

the mails in accordance with the standing order and regulations of the Department the Postmaster General had the right, and it was his duty, to withhold and deduct from the authorized compensation a reasonable amount as damages for such failure. That was all he did in this case. The two material things which justify the action of the Postmaster General are not denied. Delay in delivering the mails on certain occasions is admitted in the petition, and the reasonableness of the amount deducted is not in controversy.

The claimant disputes the liability to any deductions whatever for non-delivery of the mails on time, and claims the whole price for perfect service, notwithstanding any of its delinquencies. To this position of the company as to its rights and liabilities we cannot accede

On the whole case the claimant is not entitled to recover, and the petition must be dismissed.

27 V.—*Judgment of the Court.*

At a Court of Claims held in the city of Washington on the 15th day of February, A. D. 1886, judgment was ordered to be entered as follows:

The Court, on due consideration of the premises, find for the defendants, and do order, adjudge, and decree that the petition of the claimant, The Jacksonville, Pensacola, and Mobile Railroad Company, be dismissed.

28 VI.—*Application of Claimant for and Allowance of Appeal.*

THE JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD COMPANY
vs.
THE UNITED STATES. } No. 14572.

From the judgment rendered in the above-entitled cause on the 15th day of February, 1886, in favor of the defendants, the claimant, by Samuel M. Lake, its attorney, on the 22nd day of March, 1886, makes application for and gives notice of an appeal to the Supreme Court of the United States.

SAM. M. LAKE,
Attorney for Claimant.

Filed March 22, 1886.

And now, to wit, March 22, 1886, it is ordered that the appeal be allowed as prayed for.

WILLIAM S. RICHARDSON,
Chief Justice.

29 In the Court of Claims.

THE JACKSONVILLE, PENSACOLA AND MOBILE RAILROAD COMPANY
vs.
THE UNITED STATES.
} No. 14572.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court and the conclusion of law thereon, of the opinion of the court, of the final judgment of the court, of the application of claimant for the allowance of appeal to the Supreme Court of the United States, and of the allowance of said appeal.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court of Claims, at Washington city, this 26th day of March, 1886.

[Seal of Court of Claims.]

JOHN RANDOLPH,
Ass't Clerk C't of Claims.

Endorsed on cover: Court of Claims. No. 867. The Jacksonville, Pensacola and Mobile Railroad Company, appellant, *vs.* The United States. Filed March 30, 1886.

118-626

In the Supreme Court of the United States.

OCTOBER TERM, 1885.

THE JACKSONVILLE, &C., RAILROAD Company, appellant, *vs.* THE UNITED STATES. } No. 1305.

MOTION TO ADVANCE, FOR HEARING AT SUCH EARLY DAY IN THE NEXT TERM AS MAY BE CONVENIENT TO THE COURT.

The case above named involves questions of importance, some of which are still recurring, and must continue to do so in future, in settlements betwixt the Post-Office Department and contractors for carrying the mail—*ex. gratia:*

1. Whether the 10 per cent. and other deductions from pay authorized by the acts of July 12, 1876, and June 17, 1878, applied to the pay of land-grant railroad companies during what such companies claim to have been terms of duty current at the passage of such statutes.

2. Whether section 3962 Revised Statutes authorizes a deduction of pay for mail trips which were performed, but not within schedule time, such performance

having been completed as soon as was permitted by obstacles which for the time were beyond the control of the carrier; also whether any question of fault arising upon such occasions is to be determined *finally* by the Post-Office Department.

3. Whether railroad carriers are entitled to compensation for conveying the mails at stations other than the termini of their routes from the station to post-offices *not more than* 80 *rods distant* therefrom.

The two latter questions, of course, are constantly recurring in the business of the Government.

About one hundred cases are now pending in the Court of Claims which involve the above questions; and an indefinitely large amount of litigation in future will be prevented or ended by an early determination thereof.

Very respectfully,

JOHN GOODE,
Solicitor-General.

118-626

118-626

JUDGE CURTIS' CIR. CT.
FILED
OCT 4 1886
JAMES H. McKENNEY
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1886.

No. 867.

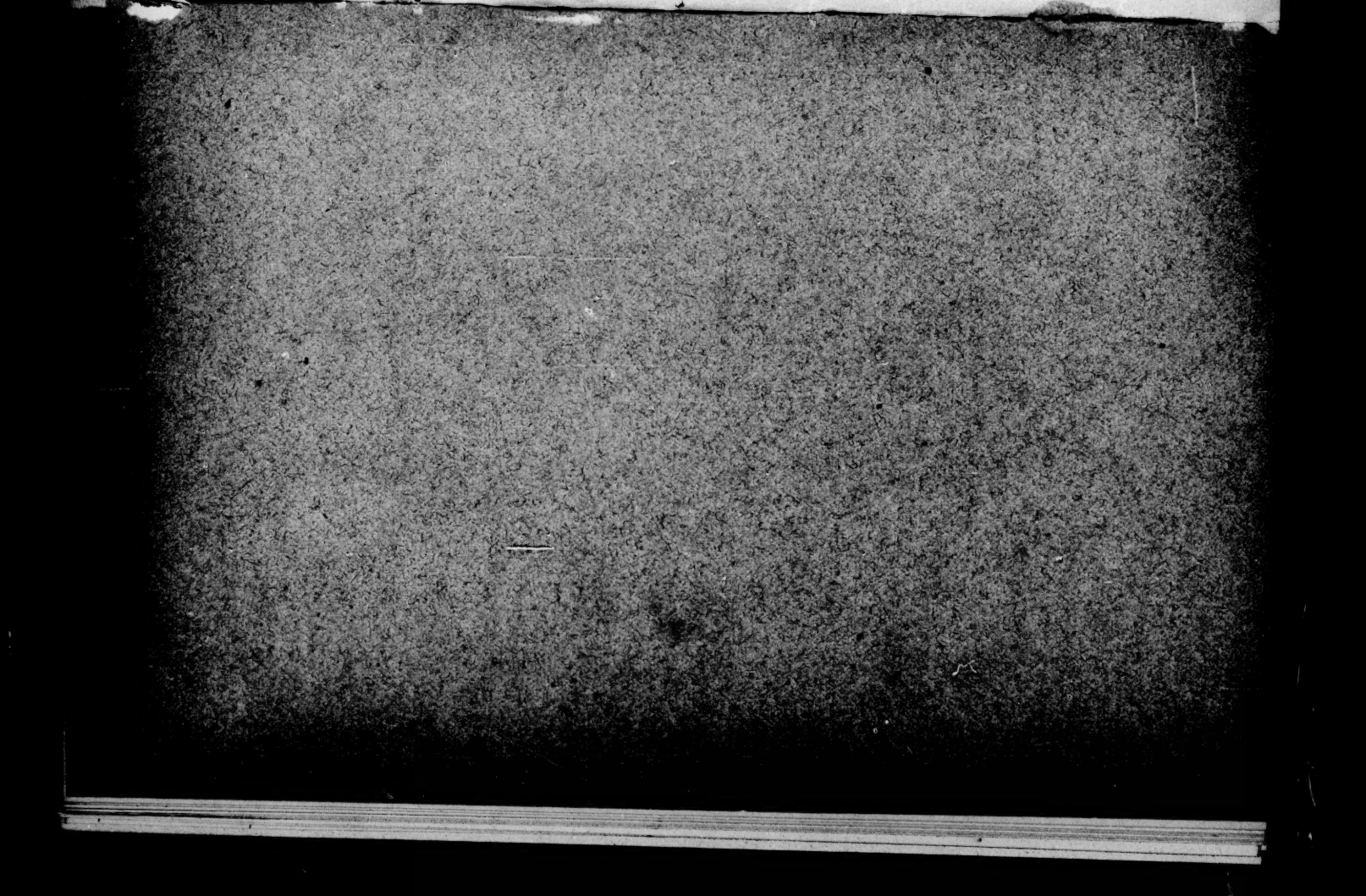
THE JACKSONVILLE, &c., RAILROAD COMPANY

vs.

THE UNITED STATES.

BRIEF FOR THE APPELLANT.

JUDD & DETWEILER, PRINTERS.



IN THE

Supreme Court of the United States.

OCTOBER TERM, 1886.

No. 867.

THE JACKSONVILLE, &c., RAILROAD COMPANY

vs.

THE UNITED STATES.

BRIEF FOR THE APPELLANT.

This was an action for a balance claimed to be due for mail pay during the four years betwixt July 1, 1876, and June 30, 1880.

The question is, whether the decision of this Court in the case of the Chicago and Northwestern Railroad Company, 104 U. S., 680: to the effect that the deductions from mail pay, due *land grant* companies, authorized by the statute of July 12, 1876, could not be enforced during the existence of previously made *time contracts* for mail transportation: covers a case of "*recognized service*" within a State—contemporaneous mail contracts within which, by permanent regulation, extended for four years from and after July 1, 1876.

The claimant admits that the principle in the case above cited requires that in order to exclude the *immediate* operation of the statute of July 12, 1876, mail contracts then current must have been *time contracts.* It also admits that in its case there was no formal written contract. It contends, however, that the mails were delivered and received by it on and after the 1st of July, 1876, upon a previous *contract*—"contract" *defined* by printed or written communications in contemplation thereof betwixt itself and the Post Office Department, to be found in the *record*—"contract" which those communications defined as *for four years.*

The material Findings by the Court of Claims are briefly as follows:

That ("I") the claimant is a land-grant company by virtue of the act of 1856, ch. 31 (May 17), 11 Stat., 15, [which provided as follows:

"SEC. 5. *That the United States mail shall be transported over said roads and branch, under the direction of the Post Office Department, at such price as Congress may by law direct: Provided, That until such price is fixed by law the Postmaster General shall have the power to determine the same.*"]

That ("II") during the Florida-mail contract term for 1871–1875 it had carried the mail under a formal contract therefor; that ("III"), although the claimant continued to carry the mail until July 1, 1880, no further formal written contract was made with it, and that after July 1, 1876, without protest upon its part, it was, from time to time, paid for its service in accordance with orders which made the deductions now complained of, and which assigned the grounds thereof.

That ("IV" and "XI") up to July, 1875, Florida had belonged to a mail *section* whose four-year contract terms ended respectively in 1871, 1875, &c., but that in the last-named year the Postmaster General, with a view of trans-

ferring the State into another section, intercalated a mail-carrying term of one year, so that thereafter the four-year contracts should begin with July 1, 1876, &c.

That ("V") "in the spring of 1876 the Postmaster General, for the purposes mentioned in Revised Statutes, section 4002, sent to the claimant for the route named in the petition a railroad-distance circular and a railroad-weight circular in the usual form (the latter reciting at length section 4002; act of March 3, 1873), and the information therein requested was duly furnished."

That ("XI," pp. 19, 20) at that time contractors were notified that "the United States is divided into four contract sections. A general letting for one of these sections occurs every year, and contracts are made at such lettings for four consecutive years, commencing on the first day of July. The sections and their current contract term are: * * * *, 2. * *, *Florida* * * current term, July 1, 1876, to June 30, 1880." This term was first established before July, 1875 (top p. 20).

That ("IV"), as by *order of March* 21, 1876, it is seen that the Post Office Department understood that the *intercalated* term was *for one year;* so, by those of ("VI") *October* 12, 1876, and *February* 25, 1878, and ("VII") *July* 23, 1878 (and appended *circular*), it held that the contract made for July 1, 1876, &c., was *for a term to end July* 1, 1880.

That ("VI") upon October 12, 1876, the Postmaster General notified the claimant by circular that its pay would be reduced from July 1st previously, under the provisions of the act of July 12, 1876, reciting them, and so again ("VII") upon July 23, 1878, of the reduction under the act of June 17, 1878; also that at the settlements made in accordance with such notices the claimant made no protest.

The extent to which formal, written, and *other* contracts, respectively, regulated the mail relations of the United States with railroad companies of all sorts betwixt 1872 and 1876,

inclusive, appears, by a *table* on page 20, to have been *as* 235 *is to* 2875.

The statutes which concern the present contention, other than that above quoted, are as follows:

Revised Statutes, section 3942. "The Postmaster General may enter into contracts for carrying the mail with railroad companies without advertising for bids therefor."

Revised Statutes, Section 4002. "The Postmaster General is authorized and directed to readjust the compensation hereafter to be paid for the transportation of mails on railroad routes upon the conditions and at the rates hereinafter mentioned:

"First. That the mails shall be conveyed with due frequency and speed; that sufficient and suitable room, fixtures, and furniture, in a car or apartment properly lighted and warmed, shall be provided for route agents to accompany and distribute the mails.

"Second. That the pay per mile per annum shall not exceed the following rates, namely: On routes carrying their whole length an average weight of mails per day of two hundred pounds, fifty dollars; five hundred pounds, seventy-five dollars; one thousand pounds, one hundred dollars; one thousand five hundred pounds, one hundred and twenty-five dollars; two thousand pounds, one hundred and fifty dollars; three thousand five hundred pounds, one hundred and seventy-five dollars; five thousand pounds, two hundred dollars, and twenty-five dollars for every additional two thousand pounds, the average weight to be ascertained in every case by the actual weighing of the mails for such a number of successive working days, not less than thirty, at such times after June thirtieth, eighteen hundred and seventy-three, and not less frequently than once in every four years, and the result to be stated and verified in such form and manner as the Postmaster General may direct."

Act of 1876, ch. 179 (July 12), Rich. Supp., 224, provides:

"SECTION 1. * * * *Provided*, That the Postmaster General be, and he is hereby, authorized and directed to readjust the compensation to be paid from and after the 1st

day of July, 1876, for transportation of mails on railroad routes, by reducing the compensation to all railroad companies for the transportation of mails *ten* per centum per annum from the rates fixed and allowed by the first section of an act entitled 'An act making appropriations for the service of the Post Office Department for the fiscal year ending June 30, 1874, and for other purposes,' approved March 3, 1873, for the transportation of mails on the basis of average weight."

* * * * * * *

"SEC. 13. That railroad companies whose railroad was constructed in whole or in part by a land grant made by Congress on the condition that the mails should be transported over their road at such price as Congress should by law direct shall receive only *eighty* per centum of the compensation authorized by this act."

Act of 1878, ch. 259 (June 17), Rich. Supp., 358:

"That the Postmaster General be, and he is hereby, authorized and directed to readjust the compensation to be paid from and after the 1st day of July, 1878, for transportation of mails on railroad routes by reducing the compensation to all railroad companies for the transportation of mails *five* per centum per annum from the rates for the transportation of mails on the basis of the average weight fixed and allowed by the first section of an act entitled 'An act making appropriations for the service of the Post Office Department for the fiscal year ending June 30, 1877, and for other purposes,' approved July 12, 1876."

For error is assigned the dismissal of the petition in so far as the same claims reimbursement for mail pay deducted under the above acts of 1876 and 1878.

Any other claim presented in the petition is hereby waived.

It seems undeniable that the delivery and the transportation of the mails in question on and after July 1, 1876, was upon an undertaking betwixt the Government and the claimant the terms of which are to be gathered from their previous intercommunications having reference thereto.

In ordinary cases this proposition would be *elementary;* and, besides, it has been affirmed by this Court in Garfielde's case (93 U. S., 242), where there were instructions and proposals, back and forth, for carrying the mail for four years, terminating in a formal acceptance upon the part of the Government; this followed, however, by a *suspension* thereof and a transfer of the route to another. Upon this state of facts it was held that the proposals, &c., followed by acceptance, constituted a contract "of the same force and effect as if a formal contract had been written out and signed by the parties."

In the present case the *delivery of the mail* by the defendant is quite as strong evidence of acceptance as the *writing*—in Garfielde's case.

Garfielde's was a case of mail transportation by *steamboat*, and therefore [section 3943] agrees with the present case in dispensing with the usual *bids*. Formal written contracts for mail transportation are required by law only in case of contracts after *biddings*. (See sections 3949, 3951, 3954, &c.) Their general use at any time in contracts with railroad companies, therefore, was the effect of official routine. After this fact was recognized the practice was in great measure dropped, and its recognition may have been facilitated by the Post Office consolidation act of 1872, followed by the publication of the Revised Statutes, whereby all these provisions were brought to the notice of the general public in one act—a circumstance which may explain the figures in the table as to *formal*, *written*, and *other* contracts, mentioned above.

However, whether this supposition be well or ill founded, reasons for the requirement of sureties in the cases of

horse or stage coach transportation, where biddings are necessary, do not apply in case of railroad companies, whose time contracts would not generally be rendered substantially more secure by personal sureties, it being obvious besides that in accepting "recognized service" so largely from railroad companies (table, p. 20), most of which are not *land grants*, the Postmaster General has not intended to put the mail service of the United States in a shape other than that of four years' term.

If the Postmaster General in any case wishes for sureties from a railroad company he can entitle himself to them by demanding biddings. When he proposes to contract *without advertisement* he thereby so far notifies the parties that a formal bond will not be required. At the same time it is not denied that in any case he has *power*, in the interest of the public, to demand sureties, and after demand to waive them, and that if such waiver occurred at the instance of the company it might be matter of observation. (See 15 Ops., 482). But none of these things occurred here.

The waiver of a formal contract with sureties, in the present instance, does not indicate, therefore, that the delivery of the mails upon July 1, 1876, was upon some other understanding than that defined by the previous interchange of instructions and proposals betwixt the parties.

Nor does such indication arise from the circumstance that the contractor was *a land-grant company;* for—

(*a*) *Previously to July* 12, 1876, *the Post Office Department did not exercise its powers under the act of* 1856, *and made no distinction in mail pay betwixt land grant and other railroad companies. A suggestion here that it did is clearly an afterthought inspired by exigencies attributed to the act of July* 12, 1876. There is no appearance upon the face of the record that before July 1, 1876, the Post Office Department *even knew* that the claimant was a land-grant company.

But however that may be, the record shows that it did not then treat with it except upon the general footing of all railroad companies. The land-grant act of 1856 did not make it imperative upon the Department, in the absence of a special statute, to treat this company otherwise than as a non-land-grant company. If such acts had done so, the case in 104 U. S., 680, would have been decided otherwise. Whether the Department actually treated the claimant in July, 1876, as other companies were treated, is a matter to be decided by the usual evidence, a part of which, as is submitted, is not *the existence of power to treat it otherwise*, for that suggestion is counterbalanced by *the existence of power also* NOT *to treat it otherwise.*

Upon the whole, it is also submitted that if upon or after July 12, 1876, one had been called to determine the effect of the delivery of the mails made upon the first of that month, upon the terms of what is called *recognized service*, such determination for each of the 825 cases (table, p. 20) would have been wholly uninfluenced by the circumstance that (in far the most of them) the company *was not*, or (in some few) *was, land grant.*

(*c.*) *If in these* 825 *cases the contract was not for a term of four years, then for what term, or upon what conditions, was it?*

The burden of answering this question satisfactorily devolves upon the Government.

It seems that no other *term* can possibly be suggested.

It seems equally true that an understanding that the contemplated service should be upon terms merely of *work and labor done*, either party to quit at "option," is utterly inadmissible. The public interest in the regularity and continuity of mail service would tolerate no such understanding.

(*d*) The defense in this case appears to be a mere *pis aller*, necessitated, indeed, by the principle of the decision in 104 U. S., 680, but without facts to support it.

(*e*) *It may be added in this connection, as is evident from the findings above quoted, that in applying the rule of the statute of July* 12, 1876, *to this case the Post Office Department itself did not question the fact that it was bound to the claimant by a four years' contract created July* 1, 1876, *or before.* It repeats in several orders (Findings IV and VII) that the contract now in question extended *until July* 1, 1880. Evidently, therefore, the Government in this instance by such orders meant to contend for no more than it did in the instance which was the subject of the case reported 104 U. S., 680, viz., that land-grant companies were not protected by a time contract.

The above suggestions seem to us to be sufficient for the exigencies of this case.

But it seems pertinent also to add—

(A) That the provisions for carrying *mail* by land-grant roads made by the above-quoted act of 1856 do not apply to all the mail matter now transported by law under the direction of the Post Office Department.

For the word "mail" has been redefined by statute, and that not merely as regards weight, &c., (a change in *mere detail* which would be immaterial), but also in regard to *principle.* In other words, *mail matter*, in the general statute in force when the supposed contract of 1856 as to its *transportation* was entered into, meant (see Bright. Digest, 768, sec. 63)* only "letters" and "written or printed matter," such, indeed, as probably was alone contemplated by the framers of the Constitution, *and the conveyance of which, therefore, over mail routes, except under mail contracts, Congress might forbid.* When the act of 1876 was passed *mail matter*

* NOTE.—I cite this *Digest* (ed. 1857) because it was published contemporaneously with the act of 1856, and therefore presents at one view the postal laws then in force.

included also "merchandise" to the weight of twelve ounces, and "seeds" and "roots" to that of four pounds—that is, *matter which* (as is submitted) *may be carried upon mail routes otherwise than under mail contracts.* At present (Rich. Supp., p. 456, act of 1879), "*all matter not liable to destroy the contents of the mail bag*" *and weighing not over four pounds* is included in *mailable matter.* There is a difference *in principle* betwixt such *mail matter* and that of 1856. If the latter sort of *mail matter* may be carried to the extent of *four* pounds, then, of course, in the discretion of Congress, to that of *four hundred,* or any other number. It is submitted that Congress *cannot* also prohibit other carriers upon mail routes from this work. There is therefore such a *specific* (not merely *quantitative*) difference betwixt "mail" as used in the post office statutes *in force in* 1856 (which therefore entered into this statutory mail *contract* of that date), and in those which, in 1876, defined the work required of mail carriers; that if the latter could be applied to the statutory contract of 1856 they would materially alter its *obligation,* and certainly, in point of principle, would remove all limits upon its duty to carry "merchandise" in future, as Congress may from time to time require.

This latter sort was in any event not the *mail* provided for in the act of 1856, and as by post office acts since then Congress, upon grounds of public policy, has made what in law is called *confusion* of this latter "mail," with such as was previously contracted for, it follows that the Government cannot require a railroad company to carry at its own price, *nomine* "mail," *bags* containing *both sorts* of packages, as would be the case if the present contention of the Government shall prevail.

That laws existing at the time a contract is made enter into and limit it, so that no subsequent statutory change, *however slight,* of terms therein contained, is competent, see the later cases of Walker *vs.* Whitehead, 16 Wall., 314, and Koshkonong *vs.* Burton, 104 U. S., 668. That the word

bridge, used in a statute creating a contract in 1790, does not extend to the subsequent development in that class of structures incident to the progress of society, and known as "railroad bridges," see Bridge *vs.* Hoboken Co., 1 Wall., 116.

The line of argument above taken is not out of line with that in the Pensacola Tel. Co. Case, 96 U. S., 1; and Jackson's Case, "*ibid*," 727.

[In this connection it may as well be remarked, although patent, that the circumstance that the provisions of the act of 1856 have been re-enacted as part of the general law (R. S., sect. 4001) gives them no additional *coercive* force—none such as, ex. gr.—that of affording a later date for construing the word *mail*. The original act of 1856 alone expresses the contract betwixt the parties, and *that* is always to be read in the light of its date.]

(B.) *The above act of* 1878 *does not apply to the companies mentioned in section* 13 *of the act of* 1876—*that is, to land-grant companies; for, by reference to the act of* 1876, *it appears that land-grant companies are not provided for by the expressions used in section* 1. Section 13 is a context which shows this.

It might, therefore, be doubtful whether an amendment of the act of 1876, sec. 1 (act of 1878), which uses the phraseology of that section, and with an express reference thereto, would be held to apply to companies designated in section 13, even although, ordinarily, such words would embrace these.

But this does not express the full force of the present contention; for, by well-known rules of interpretation, inasmuch as section 13 of the act of 1876 for its purposes *incorporated* section 1, *as originally enacted*, it continued so to do, even after section 1 had been changed by the statute of 1878. To find the meaning of section 13 it is still necessary to refer

to the original wording of section 1, and would be so even if this latter were expressly repealed.

Ex parte Crow Dog, 109 U. S., p. 561.
Clarke *vs.* Bradlaugh, 82 B. D., 69.
Potter's Dwarris, 192.
Stock's Case, 8 Ad. & E., 405.

Such being the result of the rule in these cases, it remains to say that there is nothing by way of context in the statute to show that it is not in fact true, as would appear to be by the face of the law, *that Congress intended in* 1878 *to reduce the maximum of mail pay for "railroad companies" in general to, upon the whole,* 85.5 *per cent. of the pay before July,* 1876, *but was then satisfied with the reduction already made in case of land-grant companies," viz., to* 72 *per cent.*

(C.) Attention to all interests of the claimant forbids that any degree of confidence upon our part in the points first above made shall prevent the suggestion *that the act of July* 1, 1876, *did not authorize a deduction by way of "relation" to the first day of that month;* or the suggestion that *by the word "readjust," and the requirement of action by the Postmaster General in order to warrant the reduction, it seems evident that the deduction made by the order of October* 12, *given in the finding, was illegitimate, Congress having meant by the statute to regulate action by the Postmaster General, done in the regular course of office, and not to create an exceptional pro re nata occasion for reduction.* The act of 1876 was *prospective* in operation. By section 4002 and the course of the Department in that connection in issuing weight and distance circulars, &c., it is evident that the prospective *readjustment* contemplated by the act of 1876 was to be upon one of those great *occasions* solemnly required to be not less frequent than once in four years, &c. (See opinion of Black, A. G., 9 Op., 437.) It is submitted that the order of October 12, 1876, was not *read-*

justment as contemplated by the act of July 12, 1876. It was not *readjustment* at all, except in connection with the weighing, &c., previously done in the spring of 1876, *and in that connection* it was not *prospective* as regards legislation enacted in July.

In conclusion, it appears by the decision in Swift Company *vs.* The United States, 111 U. S., 22, that if the exactions above complained of were illegal it is not necessary, in order for their recovery by suit, that they should have been *protested* against.

A. J. WILLARD,
S. M. LAKE,
S. F. PHILLIPS,
For Appellant.

118-626

Office Supreme Court U. S.
FILED
OCT 12 1886
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1886.

THE JACKSONVILLE, &C., RAILROAD Company
vs.
UNITED STATES.
} No. 867.

BRIEF FOR APPELLEE.

In the Supreme Court

OCTOBER TERM, 1856.

THE LAWRENCEVILLE &c. RAILROAD }
Company }
vs. } No. 807.
UNITED STATES }

BRIEF FOR APPELLEE.

In the Supreme Court of the United States.

OCTOBER TERM, 1886.

THE JACKSONVILLE, &C., RAILROAD Company
vs.
THE UNITED STATES.
No. 867.

BRIEF FOR APPELLEE.

This action was brought to recover an alleged balance due appellant for transporting the United States mail from July 1, 1876, to June 30, 1882, between the post-offices mentioned in the petition. In this court appellant abandons all the items of this balance except one. That one is the difference between the sum received by claimant for carrying the mail from July 1, 1876, to June 30, 1880, and the sum it would have received had the rate of compensation prevailing June 30, 1876, been continued during that period.

The validity of the claim set out in this item depends upon whether appellant had a contract which entitled it to the aforesaid rate of compensation during that period. If any such contract existed it arose by implication from the facts set out in the findings of the court below. It appears from these that appellant's line of road was constructed in whole or in part by a land grant made by Congress on condition "that the United States mail shall be transported over said roads and branch under the direc-

tion of the Post-Office Department at such price as Congress may by law direct: *Provided*, That until such price is fixed by law the Postmaster-General shall have the power to determine the same." (11 Stat. L., pages 15, 16.)

That appellant carried the mail between the same post-offices from July 1, 1871, to June 30, 1875, under a formal written contract for an expressly stipulated compensation.

Without any previous contract or understanding as to the rate of compensation, appellant, upon July 1, 1875, and thereafter, carried the mails of the United States subject to the condition upon which it had accepted the land grant from Congress. The rate of compensation that appellant received from the last date to June 30, 1876, was fixed by an order of the Postmaster-General, dated March 21, 1876. This order expressly provided that the rate of compensation thereby fixed was to prevail until June 30, 1876, unless otherwise ordered. Appellant recognized the right of the Postmaster-General to fix the rate of compensation in March, 1876, for services that began at the expiration of his contract term, to wit, upon July 1, 1875, and continued its services and received the compensation allowed by this order without a murmur. Without any contract or understanding as to what its compensation was to be after July 1, 1876, appellant, in pursuance of the same policy adopted at the expiration of the contract in 1875, continued to carry the mails. In this state of affairs Congress, upon July 12, 1876, in the exercise of its expressly reserved and clear right, fixed the rate of compensation which was to be paid to claimant for its services from and after July 1, 1876.

The part of the act fixing compensation is as follows:

> That the Postmaster-General be, and he is hereby, authorized and directed to readjust the compensation to be paid from and after the 1st day of July, 1876, for transportation of mails on railroad routes by reducing the compensation to all railroad companies for the transportation of mails on per centum from the rates fixed and allowed by the first section of an act entitled "An act making appropriations for the service of the Post-Office Department for the fiscal year ending June 30, 1874, and for other purposes," approved March 3, 1873, for the transportation of mails on the basis of the average weight.
>
> SEC. 13. That railroad companies whose railroad was constructed, in whole or in part, by a land grant made by Congress on the condition that the mails should be transported over their road at such prices as Congress should by law direct, shall receive only 80 per cent. of the compensation authorized by this act. (19 Stat., 79–82.)

The Postmaster-General promptly entered an order fixing the rate of compensation "until otherwise ordered," as by the act directed, and notified claimant.

The services were still continued, and appellant still received the rate of compensation allowed by the Postmaster-General, without an intimation that any other or further sum of money was claimed therefor.

June 17, 1878, c. 259 (20 Stat. L., 140), Congress, by statute, made a further reduction of 5 per cent. on rate of compensation for mail service, to take effect from and after July 1, 1878.

The Postmaster-General took similar action on this statute, and appellant acquiesced as before.

The bare statement of the facts is a justification of